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Merrick to Decide Today on 'Prejudice' Charge in Bay

A decision will be made today on whether the preliminary hearing on charges of first-degree murder against Dr. Samuel H. Sheppard will be held in Bay Village or in another court.

Common Pleas Judge Frank J. Merrick, who yesterday heard argument on a writ of prejudice by Sheppard's attorneys, marked the case "submitted" and promised a decision "before sundown today."

The 30-year-old osteopath was in the courtroom in the custody of Sheriff Joseph M. Sweeney and deputy sheriffs as testimony was given in support and in rebuttal of Lawyer William J. Corrigan's protest that Gershon M. M. Barber, Bay Council president and acting mayor, could not give Sheppard a fair hearing.

Puts Three on Stand

In support of his contention Corrigan, assisted by Attorney Fred W. Garmone, put on the stand Mrs. Leah Jacoby Montgomery, a Cleveland Press reporter; Bay Village Councilman George J. Serb and Robert L. Swanker, former Bay service director and city engineer.

Richard S. Weygandt, Bay solicitor, took the other side and placed Councilman Lester W. Schaffer and Barber on the stand.

Barber denied having closed his mind to a presumption of Sheppard's innocence and said he would go out of his way to give Sheppard a fair trial. He was questioned by Weygandt.

Q—In the Cleveland Press of July 29 is a statement attributed to you that Sheppard was getting preferential treatment and you didn't think you would be treated in that manner.

A—No. I did not make that particular statement.

Has No Hostility

A—Are you related to the Sheppards?

A—No.

Q—Have you any hostility toward Sam Sheppard?

A—No. I would go out of my way to be fair to him.

Q—Is there any reason you should be disqualified from conducting the hearing?

A—No.

Q—Did you ever say definitely that Sam Sheppard was guilty?

A—I have always qualified anything I said about that.

Father Was Attorney

On cross-examination by Corrigan, Barber admitted having talked about the case to fellow employees at the Joseph &

Feiss Co., but insisted he had never been definite in any remarks about Sheppard's status in the case.

Barber said his father was a practicing attorney and his grandfather a judge.

"I mention that because I am fully aware of the responsibilities of the legal profession," he told Judge Merrick.

Barber also related he had advised Sheppard he was entitled to legal counsel at the time of the arrest. Sheppard's request to be permitted to remain in the hall to await his counsel came after the arraignment was concluded, Barber said.

Schaffer testified it was he and not Barber who had made the remark about Sheppard receiving preferential treatment.

Mrs. Montgomery had previously testified Barber had made the statement.

Quotes Barber

Serb testified and quoted Barber as saying on July 21 that the mystery would be solved in a matter of hours if Sheppard were arrested, jailed and subjected to interrogation.

Swanker said Barber had told him last Friday that he believed "the door is closing" against Sam Sheppard. Swanker was not certain Barber had used the word "guilty."

Swanker added that Barber

had definitely said that his mind was open and that if given evidence that Sheppard was not guilty he would change his opinion.

Weygandt recited two court decisions. One was that if a judge stated he had no prejudice that was enough to permit him to hear the case. The other was that tentative opinions formed by reading newspaper articles are not sufficient to affect a judge's attitude.

Judge Merrick denied a motion to dismiss the writ against Barber.